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SUBJECT: THE GOVERNMENT'S CASE AGAINST THE DEPUTIES--

TEXT OF THE SUPREME COURT'S DECISION

REF.: CARACAS 10395, 10394, 10344

1. SUMMARY: THE ESSENTIAL ELEMENTS OF THE GOVERNMENT'S CASE AGAINST DEPUTIES FORTUNATO HERRERA AND SALOM MESA EXPINOZA ARE CONTAINED IN THE SUMMARIES OF TESTIMONY PUBLISHED IN THE LONG SUPREME COURT DECISION ON THE CASE WHICH WERE RELEASED TO THE PUBLIC ON AUGUST 26. A CLOSE READING OF THIS TESTIMONY INDICATES THAT THE GOV'S CASE AGAINST HERRERA'S COMPLICITY AS AN INTERMEDIARY WITH THE KIDNAPPERS IS CORROBORATED BY FIVE SEPARATE WITNESSES. HOWEVER, ACCORDING TO THE TESTIMONY, THE CASE AGAINST MESA ESPINOZA IS

BASED ONLY ON BUSINESSMAN CONDE JAHN'S TESTIMONY OF DIRECT KNOWLEDGE OF MESA'S ROLE AS AN ALLEGED INTERMEDIARY. END SUMMARY.

2. THE SUPREME COURT'S RULING WILL BE SUMMARIZED BRIEFLY BY SECTION, AS FOLLOWS:

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A) LEGAL APPEALS TO THE COURT. HERRERA'S LAWYER PRESENTED A

LENGTHY PETITION, STATING THE CONSTITUTION HAS BEEN VIOLATED BY THE GOV'S DECISION TO SEIZE HERRERA PRIOR TO LIFTING OF HIS IMMUNITY (ART. 143 AND 215) AND FAILURE OF THE SUPREME COURT TO RULE ON HIS ARREST (ART. 144). FURTHER, THE PETITION STATED THAT MILITARY TRIBUNALS HAVE NO JURISDICTION IN SUCH CASES (ARTS. 68, 69 AND 49). SIMILARLY, FISCAL GENERAL MEDINA'S PETITION CITED ARTS. 143 AND 215 AND ASKED THE COURT TO DECIDE THE CONSTITUTIONALITY OF THE CASE. THE MILITARY JUDGE SUBMITTED HIS EVIDENCE AS DID LAWYERS FOR MESA.

B) THE COURT'S RULING--THE KEY QUESTIONS. THE COURT NOTES THAT IT HAD TO DECIDE THREE QUESTIONS: (1) DID THE COURT HAVE COMPETENCE TO JUDGE HERRERA'S CASE (AND, BY EXTENSION, MESA'S); (2) DID THE ACTION OF THE MILITARY COURT VIOLATE THE CONSTITUTION?; (3) DID THE ALLEGED CRIMINAL ACTIVITY FALL WITHIN THE JURISDICTION OF THE CIVILIAN OR MILITARY COURTS? THE COURT FOUND THAT, TO THE FIRST QUESTION, ART. 49 OF THE CONSTITUTION PROVIDES FOR CIVILIAN COURT REVIEW OF ALL CASES INVOLVING IMPRISONMENT OF CITIZENS. RE THE SECOND, THE COURT FOUND THAT THE MILITARY TRIBUNAL SHOULD NOT HAVE IMPRISONED THE DEPUTIES PRIOR TO THE LIFTING OF THEIR IMMUNITY. TURNING TO THE THIRD QUESTION, THE COURT FOUND THAT THE PROCLAIMED GOALS AND ACTIONS OF THE "COMANDO REVOLUCIONARIO, OPERACION ARGIMIRO GABALDON", THE GROUP THAT SEIZED NIEHOUS, ARE OF A SUBVERSIVE AND CLANDESTINE NATURE AND SEEK TO ALTER THE FUNDAMENTAL CHARACTER OF THE GOVERNMENT BY FORCE. HENCE ACTIONS IN SUPPORT OF THIS GROUP CONSTITUTE "THE CRIME OF MILITARY REBELLION", AND, THEREFORE, CAN BE JUDGED BY MILITARY COURTS. (SEE CARACAS 10344)

C) TESTIMONY AGAINST THE DEPUTIES.

I) THE CASE AGAINST HERRERA. TERRY CANAVAN OF OWENS-ILLINOIS (O-I) TOLD THE COURT THAT HE MET WITH HERRERA 10 TIMES IN VARIOUS RESTAURANTS AND BARS IN AND AROUND CARACAS TO DISCUSS THE SUM OF MONEY WHICH HERRERA SAID WOULD BE NECESSARY TO SECURE THE RELEASE OF NIEHOUS. CANAVAN TESTIFIED TO THE MEETING WITH HERRERA ARRANGED BETWEEN MRS. NIEHOUS AND DEPUTY PEDRO ARISTIMUNO AT THE LATTER'S OFFICES, WHERE HERRERA FIRST APPEARED AND CLAIMED TO MRS. NIEHOUS THAT HE HAD DIRECT CONTACT WITH THE KIDNAPPERS. THOMAS HUGHES, THE O-I LAWYER, BACKED UP CANAVAN'S TESTIMONY, NOTING THAT HE WAS WITH CANAVAN DURING TWO MEETINGS WITH HERRERA. DURING ONE OF THESE MEETINGS, HERRERA SHOWED THEM THE ID CARD OF NIEHOUSE (WHICH HAD BEEN TAKEN BY THE KIDNAPPERS) AS PROOF OF LIMITED OFFICIAL USE

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HIS DIRECT CONTACT WITH THE KIDNAPPERS. SIMILARLY, MRS. NIEHOUS TESTIFIED TO HER MEETING WITH HERRERA, AS DID BIL COLEMAN OF O-I. AN OFFICIAL OF THE INTERIOR MINISTRY'S INTELLIGENCE SERVICE (DISIP) TESTIFIED THAT CANAVAN HAD CARRIED A CONCEALED MICROPHONE, BUT NO MENTION WAS MADE OF WHETHER THE COURT USED THE TRANSCRIPTS OF CONVERSATIONS THUS OBTAINED AS EVIDENCE IN THE CASE. FINALLY, A CONGRESSIONAL MESSENGER TESTIFIED THAT HE HAD DELIVERED NUMEROUS MESSAGES BETWEEN HERRERA AND O-I OFFICIALS.

3. THE CASE AGAINST MESA ESPINOZA. CONDE JAHN'S SECRETARY TESTIFIED THAT SHE HAD MADE ARRANGEMENTS FOR CONDE JAHN AND MESA TO MEET. CANAVAN SAID THAT CONDE JAHN HAD TOLD HIM THAT "THERE WAS A WELL KNOWN POLITICAL FIGURE IN CONGRESS" WHO COULD SOLVE THE CASE, WITHOUT MENTIONING ANY NAMES. DISIP OFFICIALS SAID THEY TAILED MESA AND SAW HIM MEET WITH CONDE JAHN AT THE AIRPORT. COLEMAN SAID NEITHER HE NOR CANAVAN KNEW WHO THE ALLEGED "POLITICAL PERSON" IN THE CONGRESS WAS. MRS. NIEHOUSE SAID DEPUTY ARISTIMUNO TOLD HER THAT IF THE COMPANY WERE WILLING TO PAY A RANSOM, SHE SHOULD SPEAK TO ANOTHER (UNNAMED) DEPUTY). VENEZUELAN INDUSTRIAL-IST CONDE JAHN STATED HE MET WITH MESA SIX TIMES TO DISCUSS PAYMENT TO THE KIDNAPPERS. CONDE JAHN SAID MESA, INTER ALIA, (A) ASKED HIM TO DELIVER DOCUMENTS TO O-I TO SAVE NIEHOUS' LIFE; B) SAID HE (MESA) WAS THE "INTERMEDIARY" FOR THE KIDNAPPERS; C) ASKED FOR A PAYMENT OF BS 15 MILLION; D) MET CONDE JAHN AT THE AIRPORT TO FIND OUT WHO THE CONTACT IN THE COMPANY (OWENS-ILLINOIS) SHOULD BE; D) GAVE HIM (CONDE JAHN) AND ENVELOPE CONTAINING DOCUMENTS FROM THE KIDNAPPERS; F) TOLD CONDE JAHN THAT HE WOULD NOT DEAL WITH CANAVAN SINCE THE POLICE WERE FOLLOWING CANAVAN CLOSELY. CONDE JAHN ALSO TESTIFIED THAT CANAVAN TOLD HIM THAT THE DOCUMENTS CONDE JAHN RECEIVED FROM MESA FOR CANAVAN CONTAINED RESPONSES TO QUESTIONS THAT ONLY NIEHOUS COULD HAVE KNOWN AND HENCE CLEARLY INDICATED THAT MESA WAS IN CONTACT WITH THE KIDNAPPERS. CONDE JAHN ALSO TESTIFIED THAT HE WAS A PERSONAL FRIEND OF NIEHOUS' AND THAT HIS INVOLVEMENT WAS SOLELY "FOR HUMANITARIAN REASONS."

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